

Sevan Gorginian, Esq. (SBN 298986)
Law Office Sevan Gorginian
450 North Brand Boulevard, Suite 600
Glendale, California 91203
Tel: 818.928.4445 | **Fax:** 818.928.4450
Email: sevan@gorginianlaw.com

Counsel for Defendant

UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA
SAN FERNANDO VALLEY DIVISION

In re:
LUSINE CRISTINE DOKUZYAN,
Debtor.

HOVANES JOHN TONoyAN,
Plaintiff,

vs.
LUSINE CRISTINE DOKUZYAN,
Defendant.

Case No.: 1:22-bk-10283-MB

Chapter 7

Adv. No.: 1:22-ap-01028-MB

NOTICE OF MOTION AND MOTION
TO DISMISS COMPLAINT UNDER
FRCP 12(b)(6) FOR FAILURE TO
STATE A CLAIM FOR RELIEF

Hearing

Date: August 31, 2022

Time: 2:30 p.m.

Place: Courtroom 303
21041 Burbank Blvd.
Woodland Hills, CA 91367

See Supplemental Notice of Zoom
Hearing Filed Concurrently Herewith

**TO THE HONORABLE MARTIN BARASH, U.S. BANKRUPTCY JUDGE,
PLAINTIFF, AND ALL OTHER PARTIES OF INTEREST:**

PLEASE TAKE NOTICE that defendant, Lusine Dokuzyan ("Defendant") at the above referenced hearing date, will ask (the "Motion") this Court for an order dismissing Plaintiff Tonoyan's ("Plaintiff") *Complaint for Nondischargeability under Section 523(a) and Denial of Discharge under Section 727(a)* ("Complaint") pursuant FRCP 12(b)(6) for failing to state a claim upon which relief can be granted.

1 The Motion will be based on this notice, on the attached memorandum of
2 points and authorities, records on file in this case, and on such oral arguments as
3 may be presented at the hearing.

4 This Motion is being heard on regular notice pursuant to LBR 9013-1. If
5 you wish to oppose this Motion, you must file a written response with the court
6 and serve a copy of it upon the Movant or Movant's attorney at the address set
7 forth above no less than **fourteen (14) days** prior to the above hearing date. If
8 you fail to file a written response to this Motion within such time period, the court
9 may treat such failure as a waiver of your right to oppose the Motion and may
10 grant the requested relief.

11
12 Dated: July 12, 2022

Law Office of Sevan Gorginian

13
14 /s/ Sevan Gorginian
15 By: Sevan Gorginian,
16 Counsel for Defendant
17
18
19
20
21
22
23
24
25
26
27
28

TABLE OF CONTENTS

I.	Preliminary Statement.....	6
II.	Statement of Facts	
	A. Brief Statement of Facts Re: Plaintiff's 523(a) Claims.....	7
	B. Summary of Complaint's Facts Re: 727(a) Claims.....	9
III.	Legal Standard.....	9
IV.	Argument	
	A. Claims under Section 523(a) Should Be Denied.....	10
	B. Claims under Section 727 Should Be Denied.....	15
	C. Misc. Claims in Complaint Should Be Dismissed As Well.....	20
V.	Conclusion.....	20

TABLE OF AUTHORITIES

Bankruptcy Code

11 U.S.C. §523(a)(2)(A).....	10,11,21
11 U.S.C. §523(a)(2)(B).....	12,13,21
11 U.S.C. §523(a)(2)(C)...	13,21
11 U.S.C. §523(a)(6).....	13,15,21
11 U.S.C. §727(a)(2)(A).....	15,16,21
11 U.S.C. §727(a)(3)...	17,20
11 U.S.C. §727(a)(4).....	17,18,21
11 U.S.C. §727(a)(5)...	19,21
11 U.S.C. §727(a)(7)...	19,20,21
28 U.S.C. §2201.....	20
11 U.S.C. §707(a).....	20,21
11 U.S.C. §707(b).....	20,21
11 U.S.C. § 101.....	19

Primary Authority Caselaw (supreme court, 9th circuit, 9th circ. BAP)

<i>Ashcroft v. Iqbal</i> , 556 U.S. 662, 678 (2009).....	9
<i>Bell Atlantic Corp. v. Twombly</i> , 550 U.S. 555 (2007).....	10
<i>Field v. Mans</i> , 516 U.S. 59, 76 (1995).....	11
<i>In re Anastas</i> , 94 F.3d 1280 (9 th Cir. 1996).....	11
<i>In re Apte</i> , 180 B.R. 223 (9 th Cir. BAP 1995)...	11
<i>In re Bailey</i> , 197 F.3d 997, 1000 (9 th Cir. 1999)...	14
<i>In re Ormsby</i> , 591 F.3d 1207 (9 th Cir. 2010).....	14
<i>In re Su</i> , 290 F.3d. 1140, 1143 (9 th Cir. 2002)...	13,14
<i>Kawaauhau v. Geiger</i> , 523 U.S. 57, 61 (1998)...	13,14
<i>Lockerby v. Sierra</i> , 535 F.3d 1038, 1041 (9 th Cir. 2008)...	14

Secondary Sources

<i>In re Dakota</i> , 284 B.R. 711 (Bkrtcy. N.D. Cal. 2002).....	10,11
<i>In re Garcia</i> , 168 B.R. 403 (D. Ariz. 1994).....	16
<i>In re Quari</i> , 357 B.R. 793, 798 (Bkrtcy. N.D. Cal., 2006).....	14

Federal Rules of Civil Procedure

FRCP 8(a)(2).....	10
FRCP 12(b)(6).....	1

Federal Rules of Bankruptcy Procedure

FRBP 7001.....	20
----------------	----

Local Bankruptcy Rules

LBR 9013-1.....	2
-----------------	---

MEMORANDUM OF POINTS AND AUTHORITIES

I.

PRELIMINARY STATEMENT

Plaintiff's Complaint contains an emotionally charged rant that stems from a friendship between the parties that turned sour. Pro per Plaintiff appears to have retained a bankruptcy attorney to piecemeal this Complaint which contains only personal attacks but it does not rise to the level necessary to support any of the claims asserted. Cause exists to dismiss the Complaint without leave to amend because no amendment will help keep this Complaint alive.

In short, the Plaintiff and Defendant were friends at some point and during their friendship, the Defendant became indebted to the Plaintiff in an amount of \$11,000 for a small embroidery business she was trying to start. Plaintiff became enraged when he realized that she was in this embroidery business with a male friend. After this, Plaintiff engaged in a tantrum by sending block-paragraph text messages and phone calls to Defendant telling her to go kill herself, that she is the worst person on Earth and that he would do everything he can to make her life miserable. Plaintiff has contacted Defendant's friends and acquaintances to disparage her reputation as well (this is part of the Defendant's separately filed motion for protective order to avoid Plaintiff having access to the names of people she gave money to).

The Complaint lacks details of conduct arising to the level of fraud and misconduct warranting the claims alleged in the Complaint. For the reasons stated below, the Plaintiff asks the Court to dismiss the Complaint with prejudice.

II.

STATEMENT OF FACTS

A. Brief Statement of Facts Re: Plaintiff's 523(a) Claims

Defendant, a 26-year-old female, and Plaintiff have a relationship from high school. Defendant and Plaintiff were working together at Samsung. Defendant left her job at Samsung and became acquainted with a co-worker, Felipe Mendez ("Mendez"). Defendant and Mendez decided to start a small business venture together called "StitchCult" ("Business") which no longer operates. The Business would create various clothing apparels with different embroidered patterns. Defendant and Mendez were merely friends and nothing more. Mendez had to pay off a debt to Printify in which he incurred with respect to this Business. Printify is an online platform that allows entrepreneurs to advertise material and collect proceeds (similar to Shopify or Etsy).

Defendant and Mendez, being young, enjoyed playing video games together. Plaintiff, himself, states that "*he purchased two expensive, top-of-the-line gaming computers. . .*" and that he wanted "[*Defendant*] *to be happy and successful. . .*" [Complaint Page 7, Lines 8 – 11]. According to the Plaintiff, himself, Defendant paid back a portion of the funds that Plaintiff used to acquire the computers [Complaint Page 7, Line 11]. Had the Defendant wanted to defraud Plaintiff, as he alleges, Defendant would not have paid anything back to Defendant. The fact that Defendant *did repay* some of the money, shows she had good intentions.

Some months later, Defendant's Business started to incur more debt as they were trying to fulfill more orders. This is when Defendant reached out to Plaintiff to determine if he was able to assist with some of the debts. Having purchased computers for the Defendant before, Defendant believed he would assist here if he could. Plaintiff voluntarily decided to transfer about \$11,000 to help Defendant settle debts with her creditors. **However, at no point in time did Defendant ever make any misrepresentations to the Plaintiff to entice him**

1 **to make this loan or extension of credit.** It was merely one friend asking
2 another for help. There exists absolutely no evidence that Defendant coerced
3 the Plaintiff into giving the funds nor was it her intent to deceive Plaintiff.
4 Defendant was only inquiring about a potential loan with an intent to pay Plaintiff
5 back, similar to how she did with the computers that were purchased.

6 Plaintiff, without any demand, took steps to ensure that Defendant got the
7 money to pay off the balance to Printify. It appears this upset the Plaintiff
8 because Plaintiff allegedly believed he was only helping Defendant personally,
9 and not Mendez nor the Business. When Plaintiff realized that Mendez also
10 benefitted, that is when Plaintiff became jealous, envious, and enraged. Plaintiff
11 thought Defendant somehow defrauded him to benefit Mendez. That is far from
12 the truth and there exists no evidence to suggest otherwise.

13 The Business ended up not working out and it failed. Defendant has
14 experienced her own mental health issues, which are privileged. This led the
15 Plaintiff to begin his barrage of hateful messages intending to cause Plaintiff to
16 hurt herself. Plaintiff suggested Defendant kill herself because he, Plaintiff,
17 would not stop until he felt satisfied that he destroyed her. All of this is based on
18 emotions and nothing more.

19 Throughout the Defendant's Chapter 7 process, the Plaintiff has managed to
20 violate the automatic stay despite requests to stop. Plaintiff has sent messages
21 and called Defendant's family members and friends to slander her. Plaintiff has
22 bombarded the Chapter 7 Trustee and the Office of the United States Trustee
23 with numerous requests to intervene. This adversary is nothing more than
24 Plaintiff's continued efforts to make Defendant's life difficult.

B. Summary of Complaint's Facts Re: 727(a) Claims

Defendant filed for Chapter 7 bankruptcy on March 12, 2022. The petition was filed in good faith. At the 341(a) meeting of creditors, Defendant answered each question truthfully and to the best of her knowledge. Defendant made some minor amendments to her bankruptcy papers to clarify or add to her prior disclosures. She supplied declaration to the Chapter 7 Trustee in support of this.

According to Plaintiff's Complaint [beginning page 19 and ending on page 37], the Plaintiff does nothing more than recite events that have taken place at the Section 341(a) and in communications between parties.

Absolutely nowhere does Plaintiff state what the alleged misrepresentations are. For example, Plaintiff merely recites what took place at the Section 341(a) meeting of creditors – but he fails to state what exactly Defendant did or omit that was allegedly wrong warranting denial of discharge. Simply parroting testimony in a transcript is insufficient.

Defendant has been truthful and honest with her bankruptcy papers and disclosures. She has not concealed or falsified with an intent to deceive anyone.

III.

LEGAL STANDARD

Under *Ashcroft v. Iqbal*, to survive a motion to dismiss, “a complaint must contain sufficient factual matter, accepted as true, to ‘state a claim to relief that is plausible on its face.’ A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” 556 U.S. 662, 678 (2009). To state a plausible claim for relief, a complaint must satisfy two working principles:

First, the tenet that a court must accept as true all of the allegations contained in the complaint is inapplicable to legal conclusions. Threadbare recitations of the elements of a cause of action, supported by mere conclusory

statements, do not suffice....Second, only a complaint that states a plausible claim for relief survives a motion to dismiss. Determining whether a complaint states a plausible claim for relief will...be a context-specific task that requires the reviewing court to draw on its judicial experience and common sense. *Id.* citing Civil Rule 8(a)(2)). Under Civil Rule 8(a)(2), the complaint “does not require a detailed factual allegations” but “it demands more than an unadorned, the-defendant-unlawfully-harmed-me accusation...A pleading that offers ‘labels and conclusions’ or a ‘formulaic recitation of the elements of a cause of action will not do.’ *Id.* citing *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007)).

IV.

ARGUMENT

The Court should grant the Motion because the Plaintiff fails to state a claim upon which relief can be granted.

A. Claims under both Section 523(a) Should Be Denied.

Buried within the Complaint’s confusing diatribe exists four claims under Section 523(a), all of which are baseless and should be dismissed.

Section 523(a)(2)(A)

First, the Complaint’s allegations under Section 523(a)(2)(A) should be dismissed because the Plaintiff fails to state facts that support a plausible ground that Defendant somehow harbored the requisite intent to defraud.

Under §523(a)(2)(A), the creditor must show actual intent, not merely implied in law, or constructive intent. The requisite intent may, however, be inferred from the totality of the surrounding circumstances. *In re Dakota*, 284 B.R. at 721 citing to *In re Anastas*, 94 F.3d 1280 (9th Cir. 1996).

Here, Plaintiff’s Complaint fails to provide sufficient facts to establish that it

1 was Defendant's intent to defraud Plaintiff. Plaintiff goes on to only mention their
2 previous relationship, which had no effect on the \$11,000, where Plaintiff claims
3 he was defrauded. No oral communications were provided by Plaintiff to show
4 this actual intent. Plaintiff only alleges communications the parties had
5 surrounding the need for assistance and other personal matters. No facts
6 indicating intent to orally defraud Plaintiff in order to procure the loan needed to
7 help pay creditors of the Business.

8 A creditor must show the creditor was justified in relying on the debtor's
9 fraudulent conduct in obtaining the money, property or services. *Field v. Mans*,
10 516 U.S. 59, 73-76 (1995). Reliance must be justifiable, but not reach the level
11 of reasonableness. *In re Dakota*, 284 B.R. at 721; *In re Apte*, 180 B.R. at 229
12 (stating that "justifiable" reliance is a mixture of objective and subjective
13 standards, which takes into account knowledge and relationship of the parties
14 themselves).

15 The Complaint alleged there was " . . only one brief oral phone call over
16 Apple FaceTime . . . to finalize the nest steps of the loan request" [Complaint
17 Page 11, Lines 16-17]. There are no facts put forth by the Plaintiff to show he
18 was justified in relying on Defendant's conduct to obtain the money or services.
19 It is not justifiable to give \$11,000 to a friend with mental issues and who just
20 started a shaky business venture with a partner whom you know very little about.
21 Complaint fails to show any due diligence done on Plaintiff's behalf such as
22 requesting paperwork to show the condition of the Business. Complaint lacks
23 facts about the relationship between Plaintiff and Mendez ad therefore further
24 shows a lack of reasonable reliance. As such, the Motion should be granted
25 dismissing the claims under Section 523(a)(2)(A).

1 Section 523(a)(2)(B)

2 Second, the Complaint's allegations under Section 523(a)(2)(B) also
3 should be dismissed because Section 523(a)(2)(B) provides an exception from
4 the discharge if there is a written statement that has been materially false with
5 respect to the debtor's financial affairs which was reasonably relied on with an
6 intent to deceive.

7 What written statements is the Plaintiff referring to here? Plaintiff attached
8 a long strand of text messages that was had between the Plaintiff and Defendant
9 throughout this past year. If he is in fact referring to those statements, there is
10 nothing put forth in that shows material fraudulent statements. The texts contain
11 conversations about their personal lives and ridiculous statements such as "All I
12 want to do is to eat tacos with you. . ." [Complaint Page 8, Lines 25-26].
13 Additionally, there is nothing said in the conversations where Plaintiff could have
14 justifiably relied upon when he gave Defendant the money. In a text message
15 that was attached to the Complaint, Defendant truthfully says "[She] can't make
16 anything new" until the debt to Printify was paid off. [Complaint Page 9, Lines 5-
17 6]. Plaintiff admits that Defendant was going through severe mental health
18 problems and still went on to send money to her. [Complaint Page 7, Lines 25-
19 26]. Lastly, there are no facts set forth in the Complaint that shows it was
20 Defendant's intent to deceive the Plaintiff. In another text message attached to
21 the Complaint, Defendant says that ". . . I can pay you back quick and pay you
22 back the interest as well and give you back more if you want." [Complaint Page
23 8, Lines 19-22]. This shows that it was Defendants intent to pay Plaintiff back
24 when she was able to afford doing so, not her intent to deceive. It is unclear
25 what written statements Plaintiff is seeking in support of 523(a)(2)(B). If he is
26 referring to the text messages, this falls short of any relief under this section.

27 As such, the Motion should be granted dismissing the claims under
28 Section 523(a)(2)(B).

1 Section 523(a)(2)(C)

2 Third, the Complaint's allegations under Section 523(a)(2)(C) also should
3 be dismissed because this section excepts from discharge consumer debts owed
4 to a single creditor and aggregating over \$500 for luxury goods or services
5 incurred by an individual debtor on or within 90 days before the order of relief or
6 cash advances aggregating for more than \$750 that are extensions of consumer
7 credit under the open end credit plan obtained by an individual debtor on or
8 within the 70 days before the order for relief.

9 Once again, we are left in the dark because there are no facts alleged to
10 show any luxury goods or cash advancements. There is no indication of luxury
11 goods or cash advancements obtained by Defendant either.

12 As such, the Motion should be granted dismissing the claims under
13 Section 523(a)(2)(C).

14
15 Section 523(a)(6)

16 Fourth, the Complaint's allegations under Section 523(a)(6) also should be
17 dismissed because this section excepts from discharge debts "for willful and
18 malicious injury by the debtor to another entity or to the property of another
19 entity." A willful and malicious injury under Section 523(a)(6) requires proof of a
20 "deliberate or intentional injury, not merely a deliberate or intentional act that
21 leads to injury." *Kawaauhau v. Geiger*, 523 U.S. 57, 61 (1998).

22 To meet the willful injury requirement, Plaintiff must show either that the
23 Debtor had subjective motive to inflict the injury or that the debtor believed that
24 injury was substantially certain to occur as a result of their conduct. *In re Su*, 290
25 F.3d 1140, 1143 (9th Cir. 2002). In *In re Su*, the Ninth Circuit noted that the
26 willfulness and malice are two separate requirements that are not to be
27 "conflated" into a single inquiry, and made it clear that each alternative prong of
28 the willfulness showing must be based on a subjective standard. The subjective

standard focuses on the debtor's state of mind and precludes application of Section 523(a)(6)'s non-dischargeability provision short of the debtor's actual knowledge that harm to the creditor was substantially certain. *In re Su*, 290 F.3d at 1146.

While Bankruptcy law governs whether a claim is non-dischargeable, the court looks to state law to determine whether an act falls within the underlying tort. *In re Bailey*, 197 F.3d 997, 1000 (9th Cir. 1999); See also *Lockerby v. Sierra*, 535 F.3d 1038, 1041 (9th Cir. 2008) (holding that a breach of contract is not "willful and malicious" under Section 523(a)(6) unless accompanied by conduct that constitutes a tort under state law). It is vital to note that debts arising from recklessly or negligently inflicted injuries are not within the scope of Section 523(a)(6). *Kawaauhau v. Geiger*, 523 U.S. at 64; see *In re Quari*, 357 B.R. 793, 798 (Bkrcty. N.D. Cal., 2006). Non-dischargeability under Section 523(a)(6) is limited "to those situations in which the debtor possesses subjective intent to cause harm or knowledge that harm is substantially certain to result from his actions." *In re Su*, 290 F.3d at 1145.

A malicious injury under this section involves: (1) a wrongful act; (2) done intentionally; (3) necessarily causes injury; and (4) is done without just cause or excuse. "Maliciousness" may be implied from circumstances surrounding the debtor's conduct, even without proof that the debtor acted with spite, hatred, or ill will toward the victim. *In re Ormsby*, 591 F.3d 1207 (9th Cir. 2010).

Here, the Complaint does not show any wrongful act, let alone a wrongful act with an intent to causes injury. The Complaint alleges Defendant requested a loan to help with a debt she had to "Printify" and called Plaintiff to ". . . warn Plaintiff what would purportedly happen to Defendant and her Business Partner, if the extension of credit and monies totaling of \$11,000 from Plaintiff to Defendant was no rapidly approved and transferred to Defendant to submit to Printify" [Complaint Page 11, Lines 12-14].

1 The Complaint has failed to show any wrongful action Defendant has
2 committed throughout their tenured relationship. Additionally, the Complaint fails
3 to provide facts to show that it was Defendant's intent to hurt Plaintiff. Defendant
4 was aspiring entrepreneur who had a failing business and reached out to a friend
5 to determine if he could offer a helping hand. There are no facts indicating any
6 sort of threat, undue influence, or spite to inflict malicious injury. No malice can
7 be implied as no facts show that through Defendant's course of action, she was
8 acting in a way to harm Plaintiff. The parties have had a long-standing
9 relationship and Defendant was grateful for Plaintiff's helping hand. Defendant
10 would have paid back the amount Plaintiff had given her if it was not for a falling
11 out with the Business and her need for a fresh start with the bankruptcy.

12 As such, the Motion should be granted dismissing the claims under
13 Section 523(a)(6).
14

15 **B. Claims under Section 727 Should Also Be Denied.**

16 The Complaint seeks to deny a discharge under five different bases, again,
17 all of which are baseless.
18

19 Section 727(a)(2)

20 First, the Complaint's allegations under Section 727(a)(2) should be
21 dismissed because 11 U.S.C. §727(a)(2)(A) provides that the court shall grant
22 the debtor a discharge, unless the debtor, with intent to hinder, delay, or defraud
23 a creditor or an officer of the estate charged with custody of property under this
24 title, has transferred, removed, destroyed, mutilated, or concealed, or has
25 permitted to be transferred, removed, destroyed, mutilated, or concealed
26 property of the debtor, within one year before the date of the filing of the petition.

27 Two elements comprise an objection to discharge under Section
28 727(a)(2)(A): (1) a disposition of property by or at the sufferance of the debtor by

1 transfer, removal, destruction, mutilation, or concealment; and (2) a subjective
2 intent on the debtor's part to hinder, delay or defraud a creditor through the act
3 disposing of the property.

4 This section is construed liberally in favor of the debtor and strictly against
5 those objecting to discharge. Before a court can refuse a discharge under 11
6 U.S.C. §727(a)(2)(A), it must be shown that there was an actual transfer of
7 valuable property belonging to the debtor which reduced the assets available to
8 the creditors and which was made with fraudulent intent. *In re Garcia*, 168 B.R.
9 403 (D. Ariz. 1994).

10 Here, the Complaint provides no evidence to show it was the subjective
11 intent of the Defendant delay, hinder, or defraud creditors. The Complaint goes
12 on to talk about the balance that was transferred to Defendant to pay off Printify.
13 This was an outstanding debt that the Defendant had with regards to the
14 Business. Again, the Complaint fails to state facts to show how Defendant
15 harbored the intent to defraud the Plaintiff or anything to show Defendant's intent
16 to delay the bankruptcy petition. The Complaint shows several messages
17 between the parties illustrating the relationship the two had for each other prior to
18 the falling out. By copying and pasting text message communications, the
19 Complaint fails to show the connection on what exactly the Defendant said to
20 defraud or to support the claim under Section 727(a)(2). They were talking
21 about things such as mental health issues, how hard they had been working, how
22 difficult times are now, and how they wish all their issues would go away.

23 As such, the claim under Section 727(a)(2) should be dismissed.
24
25
26
27
28

1 Section 727(a)(3)

2 Second, the Complaint's allegations under Section 727(a)(3) should be
3 dismissed because 11 U.S.C. §727(a)(3) provides that the court shall grant the
4 debtor a discharge, unless the debtor has concealed, destroyed, mutilated,
5 falsified, or failed to keep or preserve any recorded information, including books,
6 documents, records, and papers, from which the debtor's financial condition or
7 business transactions might be ascertained, unless such act or failure to act was
8 justified under all of the circumstances of the case.

9 Here, the Complaint alleges “[d]efendant has made numerous conflict
10 amendments to their filings, first representing that they are unemployed and have
11 no income, and months later do they amend to disclose some form of income
12 and freelance work.” [Complaint Page 22, Lines 14-16]. These amounts are
13 immaterial, and records were properly shown in order to clarify. There are no
14 facts set forth in the Complaint to show Defendant failed to keep any records.

15 What recorded information of Defendants did they conceal, destroy,
16 mutilate, falsify, or fail to keep or preserve? Defendant was truthful in the
17 bankruptcy petition and listed all of her known debts and assets. There are no
18 other record that she could have kept. All of the creditors were listed and all
19 proper paperwork required for the bankruptcy were provided. Plaintiff makes no
20 attempt to state facts that would dictate a finding that Defendants violated
21 Section 727(a)(3). There is no assertion, and no basis for an assertion that
22 Section 727(a)(3) was violated.

1 Section 727(a)(4)

2 Third, the Complaint's allegations under Section 727(a)(4) should be
3 dismissed because 727(a)(4)(A) provides that the court shall grant the debtor a
4 discharge, unless the debtor *knowingly and fraudulently* made a false oath or
5 account. The alleged omissions must be material.

6 Here, the Complaint improperly¹ incorporated the 341 meeting transcript.
7 Only the transcript was put forth and there was no additional information provided
8 to assert that the oath was false. What was exactly the false oath to this
9 Bankruptcy Court or in the Defendant's petition, schedules and statement of
10 financial affairs? The Complaint rings hollow as to this requirement. The truth
11 is, there was none and therefore the Complaint should be dismissed as to this
12 cause of action. The Complaint fails to identify what disclosures or statements
13 by Defendant were fraudulently presented. The Complaint fails to identify facts
14 to show the Defendant "knowingly" and "fraudulently" made the false oaths. The
15 Complaint fails to identify that alleged false oaths were material.

16 What did Defendants say in the Schedules that was false? How was it
17 false? After the 341(a) meeting, immaterial amendments were made to only
18 clarify some minor issues such as deposits. Complaint fails to state facts to
19 show Defendant's intent to make false representations. Merely reciting the
20 testimony at Defendant's 341(a) examination is not enough. The Complaint
21 failed to allege facts showing a knowing and fraudulent false oath or account.
22 Complaint fails to contain supplemental facts to show exactly what the Defendant
23 said was false at her 341(a) meeting. There is no assertion, and no basis for an
24 assertion that Section 727(a)(4) was violated.

25
26 ¹ It appears Plaintiff illegally recorded the 341(a) examination using his own
27 recording device. The proper procedure is to request from the U.S. Trustee's Office
28 a copy of the recording as required by the rules. Then, Plaintiff needs to have the
audio transcribed using an approved transcription service. As such, any alleged
facts with respect to testimony held should be stricken from the Complaint.

1 Section 727(a)(5)

2 Fourth, the Complaint's allegations under Section 727(a)(5) should be
3 dismissed because 11 U.S.C. § 727(a)(5) provides that the court shall grant the
4 debtor a discharge, unless the debtor has failed to explain satisfactorily, before
5 determination of denial of discharge under this paragraph, any loss of assets or
6 deficiency of assets to meet the debtor's liabilities.

7 What exactly has Defendant failed to explain and where? The Complaint
8 alleged that "Plaintiff agreed to extend \$11,000 in electronic transfers via PayPal
9 and Venmo to Defendant. . ." [Complaint Page 11, Lines 20-21]. Both parties
10 were aware that the loan was to be used for the purpose of paying off a
11 outstanding loan to "Printify" so Defendant would be able to operate her
12 business. Defendant has laid out all of her assets and debts in her bankruptcy
13 petition and answered all of the questions during the 341 meeting truthfully.
14 Once Defendant realized that there was a small misunderstanding, she quickly
15 amended her petition papers to give more insight into deposit accounts. There is
16 no assertion, and no basis for an assertion that Section 727(a)(5) was violated.

17
18 Section 727(a)(7)

19 Fifth, the Complaint's allegations under Section 727(a)(7) should be
20 dismissed because Section 727(a)(7) provides that the court shall grant the
21 debtor a discharge unless the debtor has "committed any act specified in
22 paragraphs (2), (3), (4), (5), or (6) of this subsection or within one year before the
23 date of filing of the petition, or during the case, in connection with another case,
24 under this title or under the Bankruptcy Act, concerning an insider. An insider is
25 defined under 11 U.S.C. § 101 (31)(A)(i-iv) as "if the debtor is an individual
26 relative to the debtor or of a general partner of the debtor; partnership in which
27 the debtor is a general partner; general partner of the debtor; or corporation of
28 which the debtor is a director, officer, or a person in control."

1 Here, the Complaint fails to state any claims under Sections 727(a)(2)-(6)
2 and consequently results in the Complaint's failure to state a claim under Section
3 727(a)(7). The Complaint must show facts to warrant relief under those
4 subsections, which the Complaint fails to do. There was no insider relationship
5 between the Defendant and Mendez and Plaintiff has failed to show that either.
6 The burden is on the Plaintiff to establish in his Complaint the alleged "insider"
7 relationship to even reach a claim for relief under this section.

8 Therefore, the Complaint fails to state a claim under Section 727(a)(7).
9

10 **C. Miscellaneous Claims in the Complaint Should be Dismissed as Well.**

11 The Plaintiff has raised the following claims which are procedural incorrect
12 and have no grounds for relief as well.

13 Section 2201

14 First, "declaratory judgment" under 28 U.S.C. § 2201. It is unknown at the
15 moment whether even this Bankruptcy Court has jurisdiction to entertain such
16 request. Assuming the Court does, the Complaint fails to state a claim for relief
17 under this statute because this statute, 28 U.S.C. § 2201 appears to involve "any
18 civil action involving an antidumping or countervailing duty proceeding...". This is
19 not the case here and therefore neither the facts in the Complaint nor
20 accusations made warrant relief under this statute.

21 Section 707(a) and (b)

22 **Second**, Plaintiff alleges causes of action under Sections **707(a) and (b)**.
23 These sections are mostly reserved for the Office of the United States Trustee
24 and brought by way of a motion in the main bankruptcy case, not through an
25 adversary proceeding under FRBP 7001. Nevertheless, reviewing the Complaint,
26 the Plaintiff merely incorporates this baseless allegations in support of these two
27 sections. This is insufficient to warrant relief and the Court should dismiss the
28 causes of action under Section 707(a) and (b) as plead in the Complaint.

V.

CONCLUSION

Here, Plaintiff has not demonstrated nor can he demonstrate viable claims pursuant to Sections 523(a)(2), (4), and (6), Sections 727(a)(2),(3), (4),(5), or (7) or 707(a) or (b). These causes of action lack any liability and were no doubt filed for the purpose to harass the Defendant. It is particularly so when one examines the Complaint, which consists of bare-bones boilerplate conclusions.

For the above reasons, Defendant prays that this Court dismisses the Complaint **with prejudice**. The Plaintiff should not be granted leave to amend because no amendment will rectify the sheer lack of facts necessary to reach the level needed to warrant relief under these sections.

Dated: July 13, 2022

Respectfully submitted,

/s/ Sevan Gorginian
Sevan Gorginian
Counsel for Defendant

PROOF OF SERVICE OF DOCUMENT

I am over the age of 18 and not a party to this bankruptcy case or adversary proceeding. My business address is: **450 N. Brand Blvd. Suite 600 Glendale, CA 91203**. A true and correct copy of the foregoing document entitled (*specify*): **MOTION TO DISMISS PLAINTIFF'S COMPLAINT** will be served or was served (a) on the judge in chambers in the form and manner required by LBR 5005-2(d); and (b) in the manner stated below:

1. TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING

(NEF): Pursuant to controlling General Orders and LBR, the foregoing document will be served by the court via NEF and hyperlink to the document. On **7/13/22**, I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following persons are on the Electronic Mail Notice List to receive NEF transmission at the email addresses stated below:

Amy L Goldman (TR)

marisol.jaramillo@lewisbrisbois.com, AGoldman@iq7technology.com; ecf.alert+Goldman@titlexi.com

Sevan Gorginian on behalf of Debtor Lusine Cristine Dokuzyan

sevan@gorginianlaw.com, 2486@notices.nextchapterbk.com; ani@gorginianlaw.com

United States Trustee (SV)

ustpreion16.wh.ecf@usdoj.gov

2. SERVED BY UNITED STATES MAIL:

On **7/13/22**, I served the following persons and/or entities at the last known addresses in this bankruptcy case or adversary proceeding by placing a true and correct copy thereof in a sealed envelope in the United States mail, first class, postage prepaid, and addressed as follows. Listing the judge here constitutes a declaration that mailing to the judge will be completed no later than 24 hours after the document is filed.

PRESIDING JUDGE

Hon. Martin R. Barash

21041 Burbank Blvd. Suite 342

Woodland Hills, CA 91367

PLAINTIFF

Hovanes John Tonoyan

6627 Beeman Avenue

North Hollywood, CA 91606

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

July 13, 2022

Date

Ani Minasyan

Name

/s/ Ani Minasyan

Signature